

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MARK ORTEGA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

**CALL HANDLES LLC AND
CORNERSTONE AUTO PROTECTION**

Defendants,

Case No. SA-24-CV-00573-XR

**RESPONSE TO ORDER TO SHOW CAUSE
FOR FAILURE TO SERVE DEFENDANTS WITHIN 90 DAYS**

Plaintiff, Mark Ortega, by and through his attorney, hereby responds to this Court's Order to Show Cause for Failure to Serve Defendants within 90 days as required by Federal Rule of Civil Procedure 4(m). In support thereof, Plaintiff states as follows:

1. On May 27, 2024, Plaintiff filed the Complaint in this action. *See* ECF No. 1.
2. On May 27, 2024, Plaintiff filed a Request for Issuance of Summons for both Defendants. *See* ECF Nos. 2-3.
3. On May 28, 2024, the Court issued the Summons. *See* ECF No. 4.
4. On June 4, 2024, Plaintiff hired a process server to serve Defendants using information Plaintiff found on the California Secretary of State's website.
5. Call Handles, LLC is a California Limited Liability Company. Records maintained by the Business Entity Search Station for the California Secretary of State's Office reflect that Randall Yarbrough (located at 15 Sand Dollar CT, Newport Beach, CA 92663) was registered as Call Handles, LLC's agent for service of process at the time service

- was attempted on June 5, 2024. *See* **Exhibit A** (screenshot of information from the Business Entity Search Station for the California Secretary of State's Office).
6. Cornerstone Auto Protection Inc. is a California Corporation. Records maintained by the Business Entity Search Station for the California Secretary of State's Office reflect that Kevin Boyd (located at 2101 Business Center Drive, Suite 130-514, Irvine, California, 92612) was registered as Cornerstone Auto Protection Inc.'s agent for service of process at the time service was attempted on June 5, 2024. *See* **Exhibit B** (screenshot of information from the Business Entity Search Station for the California Secretary of State's Office).
 7. On June 5, 2024, the process server confirmed non-service of Call Handles, LLC by stating that the location of the registered agent was vacant. A signed proof of non-service is attached hereto as **Exhibit C**.
 8. On June 5, 2024, the process server confirmed non-service of Cornerstone Auto Protection Inc. by stating that the registered agent no longer operated at that location. A signed proof of non-service is attached hereto as **Exhibit D**.
 9. On June 5, 2024, Plaintiff hired process server to initiate an investigation to determine the correct address to properly serve Defendants, but no appropriate business address was found.
 10. On August 22, 2024, Plaintiff made a new request for issuance of summons to be able to serve Defendants via the California Secretary of State. *See* ECF Nos. 5-6.
 11. On August 29, 2024, the Court reissued the summons. *See* ECF. No. 7.
 12. On September 16, 2024, Plaintiff was able to effect service on Defendants via the California Secretary of State.

13. On September 17, 2024, Plaintiff filed the Proof of Service for both Defendants. *See* ECF Nos. 9-10.

Argument

“[I]f a plaintiff fails to serve a defendant within [90] days, the plaintiff bears the burden of establishing good cause for the failure to timely serve. *Nafzinger v. Mcdermott Int’l, Inc.*, 467 F.3d 514, 521 (6th Cir. 2006) (citing *Habib v. Gen. Motors Corp.*, 15 F.3d 72, 73 (6th Cir. 1994)). Good cause may be shown by reasonable and diligent efforts to effectuate service. *Habib*, 15 F.3d at 74 (citations omitted). To demonstrate good cause a plaintiff must show at least excusable neglect. *Stewart v. Tenn. Valley Auth.*, Case No. 99-5723, 2000 U.S. App. LEXIS 29904, 2000 WL 1785749, at *1 (6th Cir. 2000) (citing *Moncrief v. Stone*, 961 F.2d 595, 597 (6th Cir. 1992)).

“[M]ost courts find that Rule 4(m) permits a district court to grant the plaintiff a discretionary extension of time to effect service without a showing of good cause, and requires courts to extend the time for effectuating service absent a good-cause showing. *See Sandhir v. Little*, 2018 U.S. Dist. LEXIS 113478, *10-11 (citing *Petrucelli v. Bohringer and Ratzinger*, 46 F.3d 1298 (3d Cir.1995); *Panaras v. Liquid Carbonic Indus. Corp.*, 94 F.3d 338, 340 (7th Cir. 1996); *Mann v. American Airlines*, 324 F.3d 1088 (9th Cir.2003); *Thompson v. Brown*, 91 F.3d 20 (5th Cir.1996); *Espinoza v. United States*, 52 F.3d 838 (10th Cir.1995)). Moreover, the United States Supreme Court, in *dicta*, concluded that the 1993 amendment to Rule 4(m) gives courts discretion to extend the time for service even in the absence of good cause. *See id.* (citing *Henderson v. United States*, 517 U.S. 654, 663, 116 S. Ct. 1638, 134 L. Ed. 2d 880 (1996)).

Here, Plaintiff has demonstrated good cause for the failure to serve Defendants within 90 days. Plaintiff diligently pursued service through readily available means, including utilizing the

registered agent information that the Defendants had on file with the California Secretary of State. Despite these efforts, the registered agents' addresses proved to be invalid since the Defendants failed to update their registered agent information with the California Secretary of State, requiring the Plaintiff to conduct further investigation and alternative service methods. As of date, Plaintiff has successfully effectuated service on Defendants. Moreover, if the Court determines that the Plaintiff did not show good cause, the Court has the discretion to extend the time of service beyond the 90 days.

Conclusion

WHEREFORE, Plaintiff respectfully requests that this Court find good cause for the failure to serve Defendants within 90 days and deem service on Defendants effective as of September 16, 2024. Alternatively, if the Court does not find good cause, Plaintiff requests to be granted an extension beyond the 90 days.

Respectfully Submitted,

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/s/ Paulina Almanza
Paulina Almanza
State Bar No. 24109580
Attorney for Plaintiff Mark Ortega

EXHIBIT A

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Business Search

The California Business Search provides access to available information for **corporations, limited liability companies and limited partnerships** of record with the California Secretary of State, with **free PDF copies** of over 17 million imaged business entity documents, including the most recent imaged Statements of Information filed for Corporations and Limited Liability Companies.

Currently, information for Limited Liability Partnerships (e.g. law firms, architecture firms, engineering firms, public accountancy firms, and land survey firms), General Partnerships, and other entity types are **not contained** in the California Business Search. If you wish to obtain information about LLPs and GPs, submit a Business Entities Order paper form to request copies of filings for these entity types. Note: This search is not intended to serve as a name reservation search. To reserve an entity name, select Forms on the left panel and select Entity Name Reservation ? Corporation, LLC, LP.

Basic Search

A Basic search can be performed using an entity name or entity number. When conducting a search by an entity number, where applicable, **remove "C"** from the entity number. Note, **a basic search** will search **only ACTIVE entities** (Corporations, Limited Liability Companies, Limited Partnerships, Cooperatives, Name Reservations, Foreign Name

CALL HANDLES, LLC
(202014710061)

 File Amendment		 Request Certificate	
Initial Filing Date	05/21/2020		
Status	Active		
Standing - SOS	Good		
Standing - FTB	Good		
Standing - Agent	Good		
Standing - VCFCF	Good		
Formed In	CALIFORNIA		
Entity Type	Limited Liability Company - CA		
Principal Address	15 SAND DOLLAR CT NEWPORT BEACH, CA 92663		
Mailing Address	15 SAND DOLLAR CT NEWPORT BEACH,CA92663		
 Statement of Info Due Date	05/31/2024		
Agent	Individual Randall Yarbrough 15 SAND DOLLAR CT NEWPORT BEACH, CA 92663		

- View History
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EXHIBIT B

Home

Search

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Business Search

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CORNERSTONE AUTO PROTECTION INC (4541204)



Request Certificate

Initial Filing Date	12/19/2019
Status	Suspended - FTB
Standing - SOS	Good
Standing - FTB	Not Good
Standing - Agent	Good
Standing - VCFCF	Good
Inactive Date	04/02/2024
Formed In	CALIFORNIA
Entity Type	Stock Corporation - CA - General
Principal Address	2102 BUSINESS CENTER DRIVE SUITE 130-514 IRVINE, CA 92612
Mailing Address	2102 BUSINESS CENTER DRIVE SUITE 130-514 IRVINE,CA92612
Statement of Info Due Date	12/31/2022
Agent	Individual KEVIN BOYD 2102 BUSINESS CENTER DRIVE SUITE 130-514 IRVINE, CA 92612



View History



Request Access

EXHIBIT C

Civil Action No. **5:24-CV-00573-XR**

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for **CALL HANDLES, LLC**
was recieved by me on **6/05/2024**:

- ☐ I personally served the summons on the individual at *(place)* on *(date)* ; or
- ☐ I left the summons at the individual's residence or usual place of abode with *(name)* , a person of suitable age and discretion who resides there, on , and mailed a copy to the individual's last known address; or
- ☐ I served the summons on *(name of individual)* , who is designated by law to accept service of process on behalf of *(name of organization)*; or
- ☒ I returned the summons unexecuted because **Vacant** after attempting service at **15 Sand Dollar Ct, Newport Beach, CA 92663**; or
- ☐ Other *(specify)*

My fees are \$ 0 for travel and **\$ 75.00** for services, for a total of **\$ 75.00**.

I declare under penalty of perjury that this information is true.

Date: 06/05/2024



Server's signature

Steve Sauerbrey

Printed name and title

**3248 Colorado Lane
Costa Mesa, CA 92626**

Server's address

Additional information regarding attempted service, etc:

6/5/2024 5:22 PM: The property appeared vacant which was supported by empty inside, mail piles and real estate lockbox. I spoke with a neighbor who doesn't recognize name. I took a picture of the empty house inside and the lock box



Tracking #: 0134438359



EXHIBIT D

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. **5:24-CV-00573-XR****PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

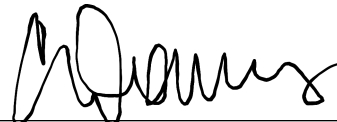
This summons for **CORNERSTONE AUTO PROTECTION INC.**
 was recieved by me on **6/04/2024**:

- ☐ I personally served the summons on the individual at *(place)* on *(date)* ; or
- ☐ I left the summons at the individual's residence or usual place of abode with *(name)* , a person of suitable age and discretion who resides there, on , and mailed a copy to the individual's last known address; or
- ☐ I served the summons on *(name of individual)* , who is designated by law to accept service of process on behalf of *(name of organization)*; or
- ☒ I returned the summons unexecuted because **Moved** after attempting service at **2102 BUSINESS CENTER DRIVE SUITE 130-514, Irvine, CA 92612**; or
- ☐ Other *(specify)*

My fees are \$ 0 for travel and **\$ 75.00** for services, for a total of **\$ 75.00**.

I declare under penalty of perjury that this information is true.

Date: 06/04/2024



Server's signature

Christopher Downs

Printed name and title

**26 Eden
 Irvine, CA 92620**

Server's address

Additional information regarding attempted service, etc:

6/4/2024 4:00 PM: I spoke with an individual who identified themselves as the person in charge and they stated subject moved. They no longer have an office in this building, please non-serve.



Tracking #: 0134321529

